

Decision 02-10-068

October 24, 2002

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Edward E. Sweeney,
Complainant

vs.

San Diego Gas & Electric Company,
Defendant,

Paul B. Austin,
Intervenor.

Case 01-12-032
(Filed December 19, 2001)

ORDER MODIFYING AND DENYING REHEARING
OF DECISION 02-08-021

Edward E. Sweeney, complainant, has filed an application for rehearing of Decision (D.) 02-08-021. The decision denied Complainant's request that SDG&E be ordered to relocate at its cost its power pole in the alley at the rear of his property in Coronado.

Mr. Sweeney purchased two adjacent lots on G Avenue in 1977. A single residence, including a garage, occupies the two lots. He initiated this complaint against SDG&E because he planned to build townhouses with garages on his property and he needed SDG&E's existing pole moved because its location interfered with the design of

the proposed construction. Sweeney was advised by SDG&E that the relocation costs would be \$12,454. Complainant contended during the hearing that SDG&E should pay

for the relocation because the utility carelessly or negligently located the pole when it replaced the original pole in 1967. He also disputed the reasonableness of SDG&E's cost estimate.

D.02-08-021 denied the requested relief. It concluded that SDG&E had properly installed the replacement pole in 1977, that SDG&E would be in violation of its tariffs if it did not charge Sweeney for the relocation; that the present location of the pole does not burden complainant in any way; and that there has been no violation of a city ordinance or utility practice. With regard to the cost issue, we found Sweeney's estimate of \$5,016 unpersuasive because it was not specific as to location or function.

Complainant's application for rehearing asserts that the decision is erroneous because it fails to contain findings of fact on all the material issues and lacks legal reasoning. In support of this assertion Sweeney maintains that the decision contradicts SDG&E's sworn testimony; relies on false information provided by SDG&E; fails to include or recognize a proclamation by the Administrative Law Judge (ALJ) relating to safety considerations; and is not supported by reliable cost evidence since SDG&E did not provide its cost information. The application for rehearing requests correction of these "legal errors".

We have reviewed these assertions and conclude that they are without merit. They primarily concern whether the findings are supported by substantial evidence in the record and whether there are findings on all material issues.

When conducting substantial evidence review, the California Supreme Court has held that the reviewing court must look at the evidence on both sides. (Bixby v. Pierno, (1971) 4 Cal. 3d 130, 143 n. 10, 144, 149 n.22). If substantial evidence "is present, no matter how slight it may appear in comparison with the contradictory evidence, the judgment will be affirmed." (9 Wilkin Cal. Procedure (4th ed. 1997) Appeal

§ 364, p. 414.) And in determining whether there is substantial evidence, the Court of Appeal, in Richardt v. Hoffman (1997) 52 Cal. App. 4th 754, 756, has described its role as follows:

“[W]e have no power to judge the effect or value of the evidence, to weigh the evidence, to consider the credibility of the witnesses, or to resolve conflicts in the evidence, to consider the credibility of the witnesses, or to resolve conflicts in the evidence or in the reasonable inferences that may be drawn therefrom.” (Leff v. Gunter (1983) 33 Cal. 3d 508, 518 [189 Cal. Rptr. 377.658 P.2d 740], quoting Overton v. Vita-Food Corp. (1949) 94 Cal. App. 2d 367, 370 [210 P.2d 757].) Our role is limited to determining whether the evidence before the trier of fact supports its findings. (Reddy v. Gonzales (1992) 8 Cal. App. 4th 118, 123 [10 Cal. Rptr.2d 55].)”

After review of the evidentiary record we have determined that there are findings on the material issues and there is adequate support for the findings of fact, as discussed below.

A. Lack of Support for Findings on Location of the Existing Pole

The first contention refers to when and exactly where the pole was originally set in the 1920's. The Application claims that there is a contradiction between the Decision and SDG&E's written testimony (Exh. 24) because the Decision states the pole was set in 1925 whereas Exh. 24 states 1923. Even though the Application is correct on this point, such a minor factual error does not rise to the level of legal error justifying rehearing. We will modify the decision to reflect the year 1923 rather than 1925 in order to be consistent with SDG&E's testimony in Exh. 24.

Complainant also cites an inconsistency as to the exact location of the pole; whether it was originally located on the property line or four feet north of the property line but still within SDG&E's right-of-way. A review of SDG&E's exhibits (Exhs. 14, 15, 16 and 24) and the transcript of the public hearing does not reveal exactly where the pole was set in 1923. The record does show that while it is general utility practice to

place power poles such as the one involved here on the property line, there is no requirement to do so. (Exh. 24.) Therefore, as long as the pole was within SDG&E's right-of-way, Sweeney has not demonstrated that the utility violated any rule or regulation. Consequently, there is no showing of any legal error.

B. Alleged False Testimony By SDG&E

Next, the Application contends that SDG&E provided false information regarding location of the existing pole. It cites several inconsistent communications from SDG&E regarding where the pole was first installed and then where it was later relocated to in 1967. Complainant argues, therefore, that SDG&E has been negligent in its placement of the pole because it violated its own standard and standards of the "U.S. Electric Power Industry" by not placing the pole on the property line. However, these contentions overlook the fact that, while SDG&E admitted it is general practice to locate poles on the property line, there is no legal requirement to do so. Although the 1967 relocation resulted in the pole being several feet off the property line involved, the pole was within SDG&E's right-of-way. Sweeney has not demonstrated any violation by SDG&E of our General Orders or any local ordinance or building permit requirement that might be applicable.

C. Lack of Inclusion of the ALJ's "Proclamation" Related to Moving the Power Pole

The Application asserts that SDG&E breached an agreement reached at the February 25, 2002 hearing under the Expedited Complaint Procedure (ECP) to relocate the pole to the north property line of lot 28. After the ECP was terminated, an evidentiary hearing was held on April 15, 2002 in which the parties agreed that relocation of the pole to the south side of lot 28 was acceptable. However, in the Application for Rehearing, the complainant maintains that this is contrary to a statement by the ALJ at the hearing that the pole would not be moved "for years" if any party did not agree on a

new location. Complainant states that the agreed upon relocation site will inhibit vehicle access and egress from his newly constructed garage.

The fact remains, however, that Mr. Sweeney agreed to the relocation to the south property line of lot 28 at the April 15, 2002 hearing (Hearing Transcript (Tr.) p. 18-24). He further agreed to grant SDG&E an additional easement as the relocated pole would be outside its existing right-of-way. Furthermore, he agreed to do this without receiving any compensation. (Tr. 20-21.) Review of the transcript reveals that the ALJ's statement referred to occurred at the outset of the evidentiary hearing. (Tr. 4). This was no more than an admonishment that if the parties could not reach an agreement on where to relocate the pole it could be years before it is moved; and that they needed to make up their minds on one of several possible locations (Tr. 4.) After taking a recess for settlement discussions, the agreement described above was reached. The absence of this statement by the ALJ in the Decision does not constitute legal error.

D. Rejection of Sweeney's Cost Estimate

Mr. Sweeney objects to the Decision's rejection of his cost estimate with the offhand statement that it is "neither location specific or functionally specific". (D.02-08-021, p. 3) He argues that the estimate was comprehensive and was prepared by a graduate electrical engineer with over 35 years of electric utility experience.

The record evidence on the estimated cost of the project consists of written exhibits by the two parties. Neither party presented a witness to testify and submit to cross-examination. A customer project planner prepared SDG&E's estimate. It contains a much higher estimate of taxes, and states that a four-man crew would be involved plus the brief assistance of a separate bucket truck and its crew. (Ex. 6). Sweeney's cost exhibit is based on a two-man crew completing the removal work in one-half crew day and the installation work in 1.13 crew days, and fails to mention any truck or crane crew support. It also appears not to include a new transformer, whereas SDG&E's estimate does. The qualifications of the author of complainant's estimate were not presented in any detail.

Given the general nature of complainant's showing and the lack of detailed examination of both parties' estimates, SDG&E's estimate appears to be more specifically related to the project. In these circumstances we conclude that SDG&E's estimate is likely to be more realistic than Sweeney's. Therefore, we find that it is reasonable, since SDG&E relocates power poles on a regular basis and can be reasonably assumed to possess more detailed information as to the time and material costs involved. We will modify Finding of Fact No. 4 to elaborate on this point. No other issues require discussion.

THEREFORE IT IS ORDERED that:

1. D.02-08-021, p. 4 is modified to revise Finding of Fact No. 1 to read as follows:

1. SDG&E first placed the power pole behind 935 G Avenue, Coronado in 1923, and replaced it in 1967. Complainant has not shown that SDG&E was negligent in placing the pole.
2. Finding of Fact No. 4 of D.02-08-021 is modified to read as follows:
 4. Neither party presented a cost witness to testify on its cost estimate. SDG&E's cost estimate of \$12,454 is based on utilizing a four-person crew plus the assistance of a separate bucket truck and its crew, and includes a new transformer. Complainant's lower cost estimate is based on a smaller crew, is more general in character, and does not appear to include a new transformer. SDG&E's continuous experience with power pole relocation projects and its more detailed information as to time and material costs for such projects justifies the adoption of its cost estimate as reasonable.

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3. Rehearing of Decision 02-08-021 as modified is denied.
4. This proceeding is closed.

This order is effective today.

Dated October 24, 2002, at San Francisco, California.

LORETTA M. LYNCH
President
HENRY M. DUQUE
CARL W. WOOD
GEOFFREY F. BROWN
MICHAEL R. PEEVEY
Commissioners